

1 MAUREEN E. MCCLAIN (State Bar No. 062050)
2 Email: mcclain@kmm.com
3 ALEX HERNAEZ (State Bar No. 201441)
4 Email: hernaez@kmm.com
5 KAUFF MCCLAIN & MCGUIRE LLP
One Post Street, Suite 2600
San Francisco, California 94104
Tel: (415) 421-3111
Fax: (415) 421-0938

6 Attorneys for Defendant
7 DOLLAR TREE STORES, INC.

8 BETH HIRSCH BERMAN (VA Bar No. 28091)
Email: bberman@williamsmullen.com
9 WILLIAMS MULLEN
Dominion Tower, Suite 1700
999 Waterside Drive
10 Norfolk, Virginia 23510
Telephone: (757) 629-0604
11 Facsimile: (757) 629-0660

12 *Pro Hac Vice* Attorneys for Defendant
13 DOLLAR TREE STORES, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 MIGUEL A. CRUZ, and JOHN D. HANSEN,
17 individually and on behalf of all others
similarly situated,

CASE NO. C 07 2050 SC

18 Plaintiffs,

19 v.
20 DOLLAR TREE STORES, INC.,
21 Defendant.

22 ROBERT RUNNINGS individually, and on
behalf of all others similarly situated,

CASE NO. C 07 04012 SC

23 Plaintiff,

**[PROPOSED] ORDER GRANTING
DEFENDANT DOLLAR TREE
STORES, INC.'S MOTION FOR
SUMMARY JUDGMENT
[RUNNINGS]**

24 v.
25 DOLLAR TREE STORES, INC.,
26 Defendant.

JUDGE: Hon. Samuel Conti
COMPLAINTS FILED: April 11, 2007
July 6, 2007
TRIAL DATES: No dates set.

The Motion for Summary Judgment filed by Defendant Dollar Tree Stores, Inc. ("Dollar Tree") as to Plaintiff Robert Runnings ("Runnings") came on regularly for hearing on _____, 2008 at ____:____.m. before this Court in Courtroom 1, the Honorable Samuel Conti presiding. Maureen McClain, Kauff, McClain & McGuire LLP, appeared as attorney for Dollar Tree, and Scott Edward Cole, appeared as attorney for Runnings.

After considering the moving and opposition papers, evidence and arguments of the parties, and all other matters presented to the Court, the Court finds that there is no genuine issue as to any material fact and that Dollar Tree is entitled to summary judgment as a matter of law. Each of Runnings' causes of action against Dollar Tree has no merit and thus, each is summarily adjudicated in favor of Dollar Tree as set forth below:

1. Runnings' First Cause of Action seeks relief for unfair competition and unfair business practices. This claim is derived from Runnings' erroneous assertion that he is a non-exempt employee and can survive only if Runnings were able to prove that Dollar Tree had violated the California Labor Code or Wage Order as alleged in the Complaint. However, all those alleged violations are premised on the assumption that Runnings was a non-exempt employee. Since Runnings is properly classified as an exempt employee, he cannot establish any such violations and therefore has no basis on which to pursue this claim. Accordingly, the First Cause of Action should be adjudicated in Dollar Tree's favor.

2. In his Second Cause of Action, Runnings alleges he was improperly denied overtime compensation; improperly denied compensation for missed meal and rest periods; and is entitled to waiting time penalties. Since Runnings is an exempt employee, he is not entitled to overtime compensation or meal and rest breaks. Waiting time penalties are available only to those who failed to receive all wages due them upon termination of employment and since Runnings still works for Dollar Tree and has had no breaks in service for Dollar Tree, as a matter of law, waiting penalties are not available to

1 him. Therefore, the Second Cause of Action should be adjudicated in favor of Dollar
 2 Tree.

3 3. The Third Cause of Action, Dollar Tree's alleged failure to provide
 4 meal and rest breaks, is premised exclusively upon Runnings' allegations that he is a
 5 non-exempt employee. Since Runnings is an exempt employee, this Cause of Action
 6 should be adjudicated in Dollar Tree's favor.

7 4. The Fourth Cause of Action alleges that Dollar Tree improperly
 8 failed to provide Runnings with accurate wage statements. Since Runnings is an
 9 exempt employee, the law does not require that Dollar Tree provide him with an itemized
 10 wage statement. Accordingly, Runnings' claims under the Fourth Cause of Action
 11 should be denied.

12 **IT IS HEREBY ORDERED THAT** Dollar Tree's Motion for Summary
 13 Judgment is GRANTED, and that judgment be entered on Runnings' complaint in favor
 14 of Dollar Tree.

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 16 DATED: _____

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 19 **HONORABLE SAMUEL CONTI**
 20 **UNITED STATES DISTRICT JUDGE**
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